BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2019-2-E

IN RE: Annual Review of Base Rates for Fuel Costs for South Carolina Electric & Gas Company	)	**SCE&G'S RESPONSE IN OPPOSITION TO THE SOUTH CAROLINA SOLAR BUSINESS ALLIANCE'S MOTION TO BIFURCATE PROCEEDING AND, IN THE ALTERNATIVE, SCE&G'S REQUEST TO WITHDRAW RATE PR-2**

Pursuant to S.C. Code Ann. Reg. 103-829(A) (2012), South Carolina Electric & Gas Company ("SCE&G" or the "Company") herein responds in opposition to the Motion to Bifurcate Proceeding ("Motion") filed on March 13, 2019, by the South Carolina Solar Business Alliance ("SCSBA") in the above-captioned docket. In summary, the Commission has previously addressed issues regarding bifurcation and the determination of avoided costs in fuel proceedings on a number of occasions, concluded that S.C. Code Ann. §58-27-865 (2015) requires avoided costs to be considered as part of fuel costs related to purchased power, and therefore denied requests to bifurcate these issues from the fuel proceedings. The same decision should now be made denying SCSBA's pending Motion. However, if the Motion is granted, SCE&G alternatively requests approval to withdraw its rate schedule entitled "Rate PR-2 Small Power Production, Cogeneration" ("Rate PR-2") effective as of the date of the first billing cycle of May 2019 on the basis that delaying updates to Rate PR-2 beyond this date would result in customers being harmed by having to bear the burden of paying excessive avoided costs. In support thereof, SCE&G would respectfully show as follows:

BACKGROUND

In connection with its 2016 annual fuel proceeding, SCE&G sought approval of Rate PR-2 that reflects SCE&G's long-run avoided cost rates[1] to be used in conjunction with negotiating long-term contracts with qualifying cogeneration facilities ("QFs") pursuant to the Public Utility Regulatory Policies Act, 16 U.S.C.A. §§ 796 *et seq.* ("PURPA"). As a party to that proceeding, SCSBA requested that future adjustments to Rate PR-2 be considered in a separate dedicated docket; however, the Commission disagreed finding that, in accordance with Act No. 236 of 2014, any adjustments to Rate PR-2 "should be considered as part of the Company's annual fuel proceeding." Order No. 2016-297 at p. 25.

Following this approved procedure, SCE&G updated its avoided costs and Rate PR-2 in both its 2017 and 2018 annual fuel review proceedings. Although SCSBA did not oppose the consideration of SCE&G's updated avoided costs in the 2017 fuel proceeding, on March 26, 2018, SCSBA filed a Motion to Bifurcate Issues (Exigent Relief Requested) ("2018 Motion to Bifurcate") in Docket No. 2018-2-E. Therein, SCSBA complained that it had not had sufficient time to hire an expert witness, conduct discovery, receive and review discovery responses and testimony from SCE&G, and prepare responsive testimony regarding the avoided costs under consideration in the 2018 fuel docket. 2018 Motion to Bifurcate at p. 1. On this basis, SCSBA requested that the Commission "bifurcate the issues of SCE&G's [Rate PR-2] update ... from this fuel case Docket." However, by Order No. 2018-267, dated April 4, 2018, the Commission denied the request noting that, in Order No. 2016-297, the Commission found "any adjustments to the PR-1 or PR-2 tariff should be considered as part of the Company's annual fuel proceeding" and

[1] The term "avoided costs" means the "incremental costs ... of electric energy or capacity or both which, but for the purchase from the [QF], such utility would generate itself or purchase from another source." 18 C.F.R. § 292.101(b)(6).

that "S.C. Code Ann. § 58-27-865(A)(2)(c) requires [the Commission] to include avoided costs under PURPA as part of fuel costs related to purchased power."[2]

On April 6, 2018, SCSBA petitioned the Commission to rehear or reconsider its decision in Order No. 2018-267 ("Petition for Rehearing"), again arguing that the issue of "a change in avoided cost methodology" should be bifurcated. *Id.* At the outset of the hearing on the merits of SCE&G's 2018 annual fuel proceeding, the Commission denied SCSBA's Petition for Rehearing, finding that the "fuel case is an entirely appropriate context for" determinations regarding updates to Rate PR-2 "and is consistent with the normal course of such cases. Docket No. 2018-2-E, tr. Vol. 1 at p. 12, ll. 21-24. The Commission also concluded that, "at best, [SCSBA's] argument is that it is within the Commission's discretion as to whether such changes should be considered in the context of the fuel case," and, "[i]f so, then in exercising such discretion, … [the Commission holds that] this proceeding [is] the current and appropriate venue for such determinations." *Id.* at p. 13, ll. 4-10. *See also id.* at p. 15, ll. 6-10 (concluding that "a fuel case is an entirely appropriate context for determinations" related to avoided cost issues). Following the hearing on the merits in Docket No. 2018-2-E, the Commission issued its Order No. 2018-322(A), dated May 2, 2018, again making clear that "[a]llowing updates to [Rate PR-2] **only** during the annual fuel proceeding recognizes the importance of stability and certainty for both the generating facilities developers and the Company." *Id.* at 26 (emphasis added).

In compliance with these prior decisions and the statutory framework established by S.C. Code Ann. § 58-27-865 and using the same avoided cost methodology previously approved by the Commission, SCE&G recalculated its avoided costs and updated Rate PR-2 in connection with the

[2] S.C. Code Ann. § 58-27-865(A)(2)(c) (2015) provides that "'fuel costs related to purchased power' … **shall include** … **avoided costs** under … PURPA.") (emphasis added).

instant proceeding. Despite the fact that the Commission, on at least four separate occasions, has ruled that updates to Rate PR-2 are properly considered in SCE&G's annual fuel proceedings, SCSBA filed the instant Motion once again seeking to bifurcate the proceedings in the above-captioned matter and to consider issues related to avoided cost at some undefined point "later in 2019," on the unsupported assertion that delaying consideration of these matters would promote "efficiency and judicial economy." Motion at 1.

DISCUSSION

SCSBA's request is without merit and the Motion should be denied for several reasons.

I. BIFURCATION WOULD HARM CUSTOMERS BY SUBJECTING THEM TO EXCESSIVE AVOIDED COSTS.

As an initial matter, it is apparent from the arguments presented in the Motion that SCSBA's concern is not "based on considerations of efficiency and judicial economy" as it suggests. Rather, SCSBA is seeking, on behalf of its solar energy member companies, to delay timely updates to the avoided costs reflected in Rate PR-2 in order to keep the rates as high as possible for as long as possible and to avoid variable integration costs, which are a component of avoided costs and for which they have contractually agreed to be financially responsible. Because the amounts paid to these facilities through Rate PR-2 are recovered as part of the Company's fuel costs, the relief sought by SCSBA, if granted, would result in SCE&G's customers paying more than the Company's actual avoided costs for an indeterminate period of time. On this basis alone, SCSBA's Motion should be denied.

As discussed above and as required by statute and Commission orders, SCE&G's annual review proceeding requires the Company to update its avoided cost calculations so as to properly reflect the incremental costs of energy and capacity it is able to avoid as a result of power purchases from QFs under PURPA. Using the same methodology that has been approved by the Commission

in previous proceedings, SCE&G determined that its current avoided energy costs are lower than those previously approved by the Commission in Order No. 2018-322(A) and that its avoided capacity costs continue to be zero. On this basis, SCE&G proposes to reduce the energy payments that would be paid to new QFs that execute a power purchase agreement ("PPA") on and after the date of the first billing cycle in May. In addition, SCE&G included in Rate PR-2 a monthly variable integration charge ("VIC") in order to recover from QFs the variable integration costs that result from the power they generate. *See* Order No. 2016-297 at p. 25 (any adjustments to Rate PR-2 "should be considered as part of the Company's annual fuel proceeding").

SCSBA asserts that, as a result of these two issues, solar facilities may experience "major, material financial damages" and that certain facilities may be "financially non-viable." Motion at p.3. What SCSBA conveniently ignores, however, is that by "bifurcating" these issues and, thereby, delaying updates to SCE&G's avoided costs and Rate PR-2 in this proceeding, the higher avoided costs and Rate PR-2 energy rates approved in Order No. 2018-322(A) will remain in effect beyond the first billing cycle in May of 2019. Thus, SCE&G would be required to continue entering into PPAs based on excessively high avoided costs until the conclusion of the bifurcated proceeding and the approval of a new Rate PR-2 by the Commission. Accordingly, new solar projects that sign a PPA after the first billing cycle in May of 2019 would be compensated for at least 10 years based on avoided costs that exceed SCE&G's actual avoided costs. Not only would this be directly contrary to the express language of PURPA regulations,[3] it also would have the effect of requiring SCE&G's customers to subsidize new solar QF facilities that otherwise may be

[3] *See* 18 C.F.R. §292.304(a)(2) ("Nothing … requires any electric utility to pay more than the avoided costs for purchases" from QFs.).

"financially non-viable" by paying them more for the energy they generate than is either appropriate or required by law.

Moreover, variable integration costs are properly included in Rate PR-2, which sets forth the Company's avoided cost rates for solar qualifying facilities, as they are a factor in determining the incremental costs that can be avoided as a result of the QF purchases. In fact, SCSBA concedes that it is appropriate to address integration costs in the context of avoided cost calculations. *See* Motion at p.7, n.2.

It also is appropriate for these variable integration costs to be borne by the QFs because, but for the power they generate and sell to SCE&G as well as the variability of such power, the Company (and its customers) would not incur those additional costs. Indeed, in the Settlement Agreement among Dominion Energy, Inc. ("Dominion Energy"), SCE&G, and SCSBA in Docket No. 2017-370-E ("Settlement Agreement"), the SCSBA agreed that variable integration charge provisions would be included in PPAs for all new QFs going forward.[4] In addition, and as discussed by SCE&G Witness John Raftery in his direct testimony, the majority of the current QFs (many if not all of which are owned by SCSBA members) have already contractually agreed to be responsible for variable integration costs.[5] It therefore was necessary for SCE&G to separately

---

[4] Specifically, the Settlement Agreement provides that the following language regarding VICs shall be incorporated into all new QF PPAs:

> "Seller shall be responsible for all Variable Integration Charges assessed against Seller, and, as approved by the Commission, all Variable Integration Costs assessed against Buyer. To the extent any Variable Integration Costs are incurred by Buyer, and Seller is deemed responsible for such costs by the Commission, Seller shall promptly reimburse Buyer for such Variable Integration Costs."

Settlement Agreement at p. 6.

[5] As discussed in the direct testimony of SCE&G witness John H. Raftery (filed on Feb. 8, 2019 in Docket No. 2019-2-E), for over 700 MW of the approximately 1,048 MW of solar generation with an executed PPA, the PPA specifically provides:

identify the VIC, instead of including it as a component of total avoided costs, so that the Company could recover these costs pursuant to the applicable terms and conditions of the existing PPAs on file with the Commission. Because SCE&G had to separately identify the VIC for these existing PPAs, SCSBA asserts that "[t]he VIC . . . is not a component of the Company's avoided cost calculations." Motion at p. 7. Such assertion is nonsensical. Simply because SCE&G was required to separately identify these costs so that they could be accounted for as provided in the existing PPAs does not mean that the VIC is not a component of the Company's avoided costs and does not make the VIC unreasonable, inappropriate or unnecessary for consideration in this proceeding as SCSBA suggests.

Furthermore, SCSBA's request that the Commission should defer consideration of the VIC if it does not bifurcate these proceedings further demonstrates the self-serving nature of its request: In this scenario, SCSBA and its members want all of the avoided cost benefits to the solar owners/developers included in this proceeding, but seek to exclude the VIC that reflects costs for which they are responsible. Granting SCSBA's request therefore would unreasonably allow privately-held entities, which made business decisions to be contractually obligated to pay a VIC, to avoid their legal commitments and, instead, require the Company's customers to bear the "financial damages," as described by SCSBA, of integrating solar QF power onto SCE&G's system for an indefinite period in the future.

(b) Seller shall be responsible for the payment of all charges that result from any change in any applicable law that occurs after the Effective Date that imposes new or additional (i) obligations on a Party to obtain or provide transmission service or ancillary services prior to the Delivery Point, or (ii) variable integration charges or imbalance costs, fees, penalties, or expenses, or provides benefits that, in the case of either clauses (i) or (ii), are imposed, assessed or credited by the transmission provider based on the impacts of energy generated by variable generation projects generally (collectively, the "Variable Integration Costs"). Seller shall be responsible for all Variable Integration Costs, irrespective of whether the Variable Integration Costs are assessed against Seller or Buyer and, to the extent any Variable Integration Costs are incurred by Buyer, Seller shall promptly reimburse Buyer for such Variable Integration Costs.

Because SCSBA's request would unreasonably, inappropriately, and unlawfully shift the burden of these costs from the solar QFs, as the "cost causers," onto SCE&G's customers, the Motion therefore should be denied.

II. PENDING LEGISLATION AND PRICING FOR ENERGY STORAGE DOES NOT JUSTIFY BIFURCATION.

SCSBA's references to pending legislation and pending issues regarding the addition of energy storage to solar projects also are not sufficient to overcome the burden imposed on SCE&G's retail customers by delaying updates to avoided costs and Rate PR-2.

Although House Bill 3659, if enacted in its current form, would require the Commission to establish a new docket, separate from annual fuel cost proceedings, to consider avoided cost rates and methodologies, it is far from certain when or if this legislation will be approved by both legislative bodies, signed by the Governor, and enacted into law. Additionally, it is entirely possible that, prior to its enactment, the legislation may be amended. Thus, SCSBA's claims that the Commission will be required to revisit all avoided cost issues within the next six months is based entirely on speculation. Simply put, SCSBA's conjecture about what may happen in the future is an insufficient basis upon which to expose SCE&G's customers, for at least 10 years, to the burdens of excessive avoided costs for the sole purpose of providing solar QFs additional financial compensation beyond that to which they are legally entitled.

Even if H. 3659 becomes law by the end of this legislative session and the Commission is required thereafter to open a new docket to separately consider avoided costs, that scenario and possibility does not provide a reasonable basis to delay updates to Rate PR-2 that are needed today to ensure, as PURPA requires, that the amounts SCE&G and its customers are paying for solar QF energy are not excessive. At most, denying bifurcation of the instant proceeding would mean that SCE&G's avoided costs would be updated with the first billing cycle in May 2019, and the parties

then would have the opportunity to review further updated avoided costs in connection with a separate proceeding as contemplated by H. 3659. SCE&G submits that this would not be an inefficient use of the parties' and the Commission's resources, nor would it be at odds with administrative economy. Rather, it would ensure that QFs receive appropriate compensation under PURPA while simultaneously avoiding SCE&G's customers being required to pay for excessive avoided costs.

Similarly, SCSBA's reliance upon the Settlement Agreement in Docket No. 2017-370-E does not support bifurcation of the issues in the instant proceeding. Based upon the clear terms of the Settlement Agreement, Dominion Energy and SCE&G agreed to take certain action with respect to the pricing of energy "storage as a separate resource" or "for dispatchable renewable generating facilities such as solar + storage." That SCE&G will later develop a rate for "storage as a separate resource" or for "solar + storage" in no way obviates the need for SCE&G to update its PR-2 rate, which is applicable to non-dispatchable solar QFs that do not have storage capability. SCSBA's reference to "curtailment protocols" and "expeditiously facilitat[ing] the addition of energy storage to solar projects" also is wholly irrelevant to a determination of SCE&G's current avoided cost and the appropriate related pricing for non-dispatchable solar QF energy. It therefore would be unreasonable to delay updates to the avoided costs reflected in Rate PR-2 pending the proposal of an unrelated pricing structure that does not affect the non-dispatchable QF facilities and contractual issues that do not pertain to the current avoided costs. Such a delay instead would only serve to unreasonably and unlawfully expose SCE&G's retail customers to excessive avoided costs in the interim.

III. SCSBA's LACK OF PARTICIPATION IS EVIDENCE OF ITS MOTIVE TO DELAY THESE PROCEEDINGS UNNECESSARILY.

As further evidence that SCSBA's interests are not those of "efficiency and judicial economy" or to "preserve the parties' and the Commission's scarce resources," Motion at pp. 1, 5, it also is important to note that SCSBA has failed to timely exercise its rights as a party of record in the above-captioned proceeding.

In previous proceedings, SCSBA made numerous complaints that the fuel docket did not provide a sufficient period of time in which it could discover information it deemed necessary. *See, e.g.*, Letter dated March 7, 2018, Docket No. 2018-2-E (asserting the issues of the fuel case and Rate PR-2 "are too complicated for the existing time frame" and that SCSBA needed "time for discovery requests to the Company"); 2018 Motion to Bifurcate at p.2 (asserting that adhering to the schedule would deprive SCSBA of its rights to due process). In order to accommodate these concerns, the Commission adjusted the timeframes in this proceeding to allow the parties of record additional time in which to conduct discovery of SCE&G and prepare their direct testimony. *See* Standing Hearing Officer Directive Order No. 2018-75-H; Order No. 2018-520.

Relative to the instant proceeding, SCSBA petitioned to intervene in this matter on December 3, 2018, which request the Commission granted on December 19, 2018. Even though SCSBA became a party of record to this proceeding over four months ago, and despite its prior complaints regarding the timeframes and the Commission's approval of additional time for discovery and the preparation of testimony, SCSBA delayed in sending any discovery to SCE&G until March 12, 2019—one week before the due date of its prefiled direct testimony and three weeks prior to the hearing to be held in this matter. It therefore is clear that SCSBA is not concerned with the efficient conduct of these proceedings or the promotion of judicial economy, but rather only is interested in unnecessarily delaying the Commission's consideration of needed

updates to Rate PR-2. That SCSBA simply chose not to avail itself of the opportunities available to conduct discovery or otherwise inform itself of the merits of Rate PR-2, including the VIC, does not warrant delaying these matters further and exposing SCE&G's customers to excessive avoided costs.

IV. IN THE ALTERNATIVE, SCE&G REQUESTS APPROVAL TO WITHDRAW RATE PR-2.

Alternatively, if the Commission decides to grant the Motion, SCE&G respectfully requests approval to withdraw Rate PR-2 upon the date of the first billing cycle in May 2019. For the reasons discussed herein, maintaining the existing Rate PR-2 beyond this date and not updating it to reflect SCE&G's current avoided costs will harm the Company's customers by forcing them to pay for excessive avoided costs to new solar QF projects. Not only is this contrary to the express language of PURPA regulations, *see* 18 C.F.R. §292.304(a)(2), it also is unreasonable in that it would require customers to pay solar QFs more for the energy they supply than the costs SCE&G avoids, resulting in the unlawful subsidization of these projects by the Company's ratepayers. While the Company asserts the appropriate course of action is to deny the Motion and proceed with a timely review of SCE&G's current avoided costs in connection with the instant proceeding, approving the withdrawal of Rate PR-2 would protect the Company's retail customers from these excessive avoided costs if the Motion is granted. New solar QFs also would not be harmed by this alternative relief in that SCE&G thereafter would separately negotiate PPAs and avoided cost rates with new solar QFs on a case by case basis as permitted by PURPA.

CONCLUSION

For the reasons stated above, SCE&G respectfully requests that the Commission deny SCSBA's Motion to Bifurcate Proceeding. Alternatively, and in the event the Commission grants the Motion, SCE&G requests that the Commission issue an order approving the Company's

withdrawal of Rate PR-2. SCE&G also requests that the Commission grant such other and further relief as is just and proper.

Respectfully submitted,

K. Chad Burgess, Esquire
Matthew Gissendanner, Esquire
Mail Code C222
220 Operation Way
Cayce, SC 29033-3701
Telephone: (803) 217-8141 (KCB)
(803) 217-5359 (MWG)
Facsimile: (803) 217-7931
chad.burgess@scana.com
matthew.gissendanner@scana.com

Mitchell Willoughby
Benjamin P. Mustian
WILLOUGHBY & HOEFER, P.A.
930 Richland Street
PO Box 8416
Columbia, SC 29202-8416
Telephone: (803) 252-3300
Facsimile: (803) 256-8062
mwilloughby@willoughbyhoefer.com
bmustian@willoughbyhoefer.com

Attorneys for
South Carolina Electric & Gas Company

Cayce, South Carolina
March 20, 2019